

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: SASSON=3

In re Application of:	)	Conf. No.: 2096
	)	
Yoel SASSON et al	)	Art Unit: 1611
	)	
I.A. Filing Date: 03/13/2003	)	Examiner: Kyle A. Purdy
371(c) Date: 09/10/2004	)	
	)	Washington, D.C.
U.S. Appln. No.: 10/507,103	)	
	)	
For: PESTICIDAL COMPOSITION	)	April 21, 2008
COMPRISING A LACTATE ESTER)	)	<b>Monday</b>

REPLY TO RESTRICTION REQUIREMENT

Honorable Commissioner for Patents  
U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop Amendment  
Randolph Building, 401 Dulany Street  
Alexandria, VA 22314

Sir:

Applicants are in receipt of the Office Action mailed March 20, 2008, entirely in the nature of a restriction requirement purportedly based on lack of unity of invention under PCT Rules 13.1 and 13.2. Applicants reply below.

Acknowledgement by the PTO of the receipt of applicants' papers filed under Section 119 **would be appreciated.**

Restriction has been required between what the PTO deems as being two (2) separate and patentably distinct inventions. As applicants must make an election even though the requirement is traversed, applicants hereby respectfully

and provisionally elect Group II, presently claims 15-25, with traverse and without prejudice.

As understood, the PTO takes the position that unity of invention is destroyed by Yoshida et al JP2000-186001 (Yoshida). Applicants believe that this is not so for the following reasons.

Yoshida does not relate to pesticides, and generally relates to antimicrobial/fungicidal compositions in the field of human health, a field quite different from that of the present invention. In Yoshida, the composition is said to control adverse effects on the human body, can be safely used, and effectively works against a variety of microorganisms.

The composition disclosed by Yoshida contains the following components:

- (1) an antimicrobial/fungicidal ingredient, e.g. 2-(4-thiazolyl)benzimidazole,
- (2) a synthetic resin, e.g. a mixture of a polyamide resin and a solvent, as a component which helps the composition fast-attach to a structure, and whereby the antimicrobial/fungicidal function is sustained for a prolonged, period, and
- (3) a mixture of a lactate ester, e.g. butyl lactate, and another solvent, e.g. 2-phenoxyethanol.

The present invention is in an entirely different field, i.e. the field of crop protection. Claim 15 calls for a growth inhibited pesticidal composition comprising at least one pesticide, and claim 1, in parallel with claim 15, calls for preventing crystallization of a pesticidal composition. Applicants believes and submit that the two groups of applicants' claims call for the same invention, although using different language.

In more detail, the present invention relates to pesticidal compositions comprising lactate esters, which are used to prevent the growth of crystals on standing and in storing the EW/EC pesticidal formulations. It is well known that emulsifiable compositions may not initially contain water, but form an aqueous micelle emulsion upon dilution with water at the site of application, and thus require crystal growth inhibitor to remain stable. Thus, the lactate esters mentioned in the present invention are not merely used as organic solvents, but being essentially soluble in aqueous medium, they stabilize the compositions of the EW/EC type.

Notwithstanding, Yoshida et al use **organic** co-solvents in their composition in which the active ingredient and lactate ester are soluble. This may present difficulties in terms of environmental safety and phytotoxicity. The current practice in pest control is to reduce the use of organic solvents.

Furthermore, the essential component in Yoshida's composition is a synthetic resin, e.g. a mixture of a polyamide resin and a solvent, used as a component which helps the composition fast-attach to a structure and the antimicrobial/fungicidal function be sustained for a prolonged period. Definitely, it is of no use and may be damaging in the presently claimed composition.

Even if it were to eventually turn out that the broadest of applicants' claims, e.g. claims 1 and 15, were not patentable (certainly not conceded by applicants), that would not mean that there is not a single general inventive concept involving the same or corresponding special technical feature in comparative other method and composition claims. But applicants need not retreat at this stage, in view of the fact that it is indisputable that Yoshida does not relate to

Appln. No. 10/507,130  
Reply dated April 21, 2008  
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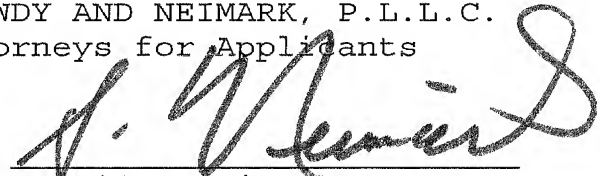
pesticidal compositions, i.e. Yoshida describes an invention completely different from the present invention.

Accordingly, applicants respectfully request the PTO to withdraw the requirement and to examine all the claims on the merits.

Respectfully submitted,

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